

TENTATIVE RULINGS for CIVIL LAW and MOTION

April 16, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

CASE: **Fortis Capital, LLC v. Reyes**
Case No. CV G 09-1178

Hearing Date: **April 16, 2010** **Department Fifteen** **9:00 a.m.**

The unopposed motion to have the truth of the matters stated in the plaintiff's first set of request for admissions to the defendant deemed admitted is **GRANTED**. (Code Civ. Proc., § 2033.280, subds. (b) and (c).) The request for monetary sanctions against Claudio Reyes is **GRANTED** in the amount of \$140.00. (Code Civ. Proc., § 2033.280, subd. (c).)

Plaintiff shall serve a copy of this order on Claudio Reyes by no later than April 19, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Hoskins Mechanical v. Cal. Ram Construction, Inc.**
Case No. CV CV 09-1509

Hearing Date: **April 16, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff's attorney, John P. Garcia of Penny & Associates' motion to be relieved as counsel is **GRANTED**. (Cal. Rules of Court, rule 3.1362.) This order is not effective until Mr. Garcia files a proof of service with the court showing service of a copy of the signed order on his client. (Cal. Rules of Court, rule 3.1362(e).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Lancaster v. County of Yolo**

Case No. CV CV 07-1551

Hearing Date: **April 16, 2010**

Department Fifteen

9:00 a.m.

Plaintiff does not dispute that the defendants may recover their attorney's fees pursuant to Government Code section 3309.5 for services on appeal. Government Code section 3309.5 provides that the court may award reasonable attorney's fees as a sanction if it finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to the Public Safety Officers Procedural Bill of Rights Act. The court must use the procedures and apply the substantive standards of Code of Civil Procedure section 128.6 in deciding whether to award attorney fees as sanctions under Government Code section 3309.5. (Govt. Code, § 3309.5, subd. (d)(2); *Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 817.)

The Court finds that the plaintiff's appeal is frivolous because any reasonable attorney would agree that the grounds raised on appeal are totally and completely without merit. (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 876.) The appeal was not even arguably meritorious. (Code Civ. Proc., § 472d; *Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1128, fn. 4; *Sabek, Inc. v. Engelhard Corp.* (1998) 65 Cal.App.4th 992; *Olmstead v. Arthur J. Gallagher & Co.*, *supra*, at 819; file in this matter.)

The total time billed for the new tort claim and settlement discussions is \$1,275.50. (Entries for 7/14/08, 8/15/08, 8/27-29/08, 9/11/08, 4/2/09 and 4/12/09.) Because this time is only partly related to the appeal, the Court deducts \$637.75 from the sum the defendants seek as sanctions. Defendants' request for attorney fees and costs against plaintiff and his attorneys of record is **GRANTED** in the amount of \$26,255.03. (Gov. Code § 3309.5, subd. (d)(2); Calif. Rules of Court, rule 8.278(d)(E).)

Plaintiff's request for sanctions is **DENIED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Northern California Collection Service, Inc. v. Scalise Jr.**

Case No. CV CV 09-3245

Hearing Date: **April 16, 2010**

Department Fifteen

9:00 a.m.

Defendants Joseph Scalise Jr. and Patricia Ann Scalise's demurrer to the complaint is **MOOT**. On April 7, 2010, a request for dismissal without prejudice of the individual defendants was entered.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.